



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1997

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2421

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111027.

The Harris County District Attorney's Office (the "district attorney") received an open records request for all records pertaining to two specified offenses that occurred in 1984. You state that all of the records of one of the referenced offenses, and some of the records of the other offense, have been destroyed in accordance with the district attorney's destruction policy due to the age of the cases. *See generally* Local Gov. Code § 203.041, *et seq.* (local government record retention schedules). You inform us that some of the remaining existing records have been made available to the requestor. You seek to withhold, however, three of the existing documents pursuant to sections 552.101 and 552.108(a)(3) of the Open Records Act.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations.

Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

Section 552.108(a)(3) of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state." You seek to withhold pursuant to section 552.108(a)(3) "the cover of the prosecutor's file on which handwritten notes are made" and a "central intake field report."

Assuming the handwritten notes were prepared by an attorney representing the state, we agree that the cover sheet may be withheld from the public pursuant to section 552.108(a)(3)(A). The central intake field report, however, consists primarily of the types of "basic information about an arrested person, an arrest, or a crime" that is not protected from public disclosure under this section. Gov't Code § 552.108(c). Because you have not explained that the district attorney has released the "basic information" about the offense to the requestor, the district attorney must release this document to the extent that it contains "basic information" about the offense in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). The remaining information in the "central intake field report" may be withheld pursuant to section 552.108(a)(3)(A).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

Ref.: ID# 111027

Enclosures: Submitted documents

cc: Mr. Gregory W. Wiercioch
Texas Defender Service
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(w/o enclosures)